



California Regional Water Quality Control Board Lahontan Region



Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.mscomm.com/~rwqcb6>
2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150
Phone (530) 542-5400 • FAX (530) 544-2271

Gray Davis
Governor

MINUTES

March 14-15, 2001

Regular Meeting

Lahontan Regional Water Quality Control Board
Tahoe Truckee Sanitation Agency
13720 Joerger Drive
Truckee

Beatrice Cooley, Chairperson, called the meeting to order at 7:30 p.m. on March 14, 2001.

BOARD MEMBERS PRESENT

John Brissenden, Hope Valley
Jack Clarke, Apple Valley
Beatrice Cooley, Ph.D., Bishop
Eugene B. Nebeker, Ph.D., Lancaster
Eric Sandel, P.E. Truckee

BOARD MEMBERS ABSENT

None

LEGAL COUNSEL

Steven H. Blum, State Water Resources Control Board

STAFF PRESENT

Harold J. Singer, Executive Officer
Robert S. Dodds, Assistant Executive Officer
Hisam Baqai, Supervising WRCE
Cindi Mitton, Chief, Mono/Owens Watersheds
Lauri Kemper, Chief, Lake Tahoe Watershed
Scott Ferguson, Chief, Northern Watersheds
Alan Miller, Chief, Carson/Walker Watersheds
Doug Smith, Chief, USTs/Dod Unit
Chuck Curtis, Chief, TMDL Unit

Lisa Dernbach, Senior Spec.Engineering Geologist
Mary Fiore-Wagner, Environmental Specialist III
Robin Mahoney, Water Resource Control Engineer
Richard Booth, Assoc. Engineering Geologist
Cadie MacDonald, Assoc. Engineering Geologist
James Brathovde, Assoc. Engineering Geologist
Tom Gavigan, Assoc. Engineering Geologist
Pamela Walker, Administrative Officer
Susan-Marie Hagen, Executive Assistant

ADDRESSING THE BOARD

Craig Woods, General Manager, Tahoe Truckee Sanitation Agency
Jeffery Scharff, Attorney representing Tom Erickson, Tahoe Tom's
Treva Hearne, Attorney representing TCN Company and Dependable Tow
William McClintock, TCN Company, Big Tree Cleaners
Roy C. Hampson and Associates, TCN Company, Big Tree Cleaners
Max Shen, Quicksilver Consulting Chemists, TCN Company, Big Tree Cleaners
Marc Zeppetello, Attorney representing Besse Pomin, Big Tree Cleaners
Bob Tamietti, Attorney representing Ken Osburn, Dependable Tow

1. PUBLIC FORUM

Craig Woods, General Manager, Tahoe-Truckee Sanitation Agency (TTSA), welcomed the Board to the TTSA facility and board meeting room. He offered the Board members a tour of the facility.

2. MINUTES

Minutes of the Regular Meeting of January, 11-12, 2001 in South Lake Tahoe. The January 2001 minutes were amended to reflect requests from Board members.

Motion: Moved as amended by Mr. Clarke, seconded by Dr. Cooley **and unanimously carried** to adopt the January 11-12 minutes as proposed.

3. ADOPTION OF UNCONTESTED CALENDAR (The items on the Uncontested Calendar were considered individually.

4. Lauri Kemper, Chief, Lake Tahoe Watershed, addressed questions from Dr. Cooley

Motion: Moved by Mr. Clarke, seconded by Mr. Sandel **and unanimously carried** to adopt this item.

5. Alan Miller Senior Engineer, Carson/Walker Watersheds, addressed questions from Mr. Brissenden and Dr. Cooley.

Motion: Moved by Mr. Brissenden, seconded by Mr. Sandel **and unanimously carried** to adopt this item.

6. Harold Singer gave an update on this item.

Motion: Moved by Mr. Sandel, seconded by Dr. Nebeker **and unanimously carried** to adopt this item

7. *Public Hearing – Consideration of an Administrative Civil Liability Order (ACL) for the TCN Company, William McClintock, Bessie Pomin, David and Betty Lowry for Failure to Submit a Technical Report for the Big Tree Cleaners in Violation of California Water Code Section 13267.*

Dr. Cooley opened the public hearing and administered the oath.

Lisa Dernbach, Senior Specialist Engineering Geologist, gave the staff presentation. She recommended that the Board affirm the ACL complaint for \$17,000.

Treva Hearne, representing the discharger, TCN Company, declined to take the oath because she was not testifying. She contended that migration was not occurring due to the non-permeable “bathtub basin” soils as demonstrated by the non-detect results of the analysis of the monitoring wells on the beach. She indicated that this data along with non-detect lake samples demonstrated that there was no threat to public health. She also stated that TCN Company had no history of prior violations since the prior settlement agreement did not reflect guilt on the part of the discharger.

Roy Hampson and Max Shen, presented their interpretation of the data.

Mr. Zeppetello, representing Besse Pomin, owner of the property where Big Tree Cleaners was located, stated that his client was now in a nursing home and has signed power-of-attorney over to her children.

Mr. McClintock of TCN Company stated that TCN did not own the land, but served as the leaseholder on the property and handled the subleases. He detailed TCN’s history of responsible environmental actions taken to address the Big Tree Cleaners site at considerable expense to his company. He also stated that he was out of money and not able to finance any further expansion of the corrective action.

Mr. Singer commented on some of the points made, the history of this case, and the policy of the State Water Board and Lahontan Regional Board staff.

Note: The Board met in closed session on March 14, 2001 from 11:10 p.m. to 11:16 p.m. to deliberate on this issue. The Board reconvened in open session at 11:19 p.m. and continued the hearing until the July 11-12, 2001 Board meeting in Tahoe City.

Dr. Cooley reminded the parties that the Board has the authority to increase the recommended level of the ACL to the maximum amount if reasonable progress toward compliance has not been made. She stated that normally the Board would affirm the Administrative Civil Liability (ACL) for an amount and stay some portion of it as incentive for demonstrated of performance by the responsible parties. To this end, the Board instructed the parties to meet and work together to do the following:

- design a plan that outlines performance guidelines for this site
- include appropriate monitoring for the site
- determine active remediation for the site
- demonstrate through the content of the plan that cooperation between the parties has occurred

The meeting adjourned at 11:25 p.m.

Regular Meeting , Continued
8:30 a. m. March 15, 2001

Dr. Cooley called the meeting to order at 8:40 a.m. on March 15, 2001. Board members present: John Brissenden, Eric Sandel, Eugene B. Nebeker, Ph.D., Jack Clarke, Beatrice Cooley, Ph.D.

1. PUBLIC FORUM

Jeff Scharff, attorney representing Tom Erickson, owner of Tahoe Tom's, stated his client's full support and intent to pursue remediation. He noted that a new consulting team was now in place and that this would negate the need for active Board involvement in the clean up of the site.

OTHER BUSINESS

9. Consideration of Recommended Revisions to State Water Resources Control Board's State Revolving Fund Loan List for Fiscal Year 2001 - 2002

Alan Miller, Chief, Carson/Walker Watersheds, briefed the Board on the proposed State Revolving Fund Loan List for fiscal year 2001-2002.

10. Effect of the Recent U. S. Supreme Court decision on *Solid Waste Association of Northern Cook Counties v. United State Corps of Engineers (SWANCC)* on the Clean Water Act, Section 401 Certification Program

Steven Blum, Legal Counsel, State Water Resources Control Board, and Scott Ferguson, Chief, Northern Watersheds, gave the staff presentation on this item, highlighting its legal implications and regulatory impacts. Steven Blum explained that the court decision impacted the definition of "waters of the United States", and has limited the United States Corps of Engineers' jurisdiction (pursuant to Section 404 of the Clean Water Act (CWA)), over isolated, intrastate waters where the Corps has relied exclusively upon the "Migratory Bird Rule" for establishing jurisdiction. The court decision will also impact the Regional Board's NPDES permitting program, which is dependent upon this definition. However, the court decision has no

impact on the Regional Board's authority to regulate waste discharges under the California Water Code. Those projects that are no longer subject to regulation pursuant to CWA Section 404 are still subject to regulation by the Regional Board.

Scott Ferguson focused his discussion on the impacts the court decision will have on the Regional Board's Clean Water Act, Section 401 Water Quality Certification Program. He explained that the Corps had usually notified Regional Board staff of numerous projects subject to Regional Board regulation. Now Regional Board staff will not receive notification on projects impacting surface waters that are no longer subject to Corps regulation. Regional Board staff will be taking a number of outreach actions to cover this potential notification gap. Scott Ferguson also explained that there will be a shift from Section 401 Certifications to waste discharge requirements, and waivers of waste discharge requirements. He also identified Regional Board staff's options for responding to unauthorized discharges and potential increases in staff resource needs relating to wetlands delineation training. Both Steven Blum and Scott Ferguson emphasized that due to the current lack of clarity related to the definition of "waters of the United States", it is now difficult to determine the full impacts of this court decision.

Mr. Blum and Mr. Singer answered questions from the Board.

ENFORCEMENT ACTION

8. *Public Hearing – Consideration of an Administrative Civil Liability Order (ACL) for Edgar Stratton and Kenneth Osburn and Dependable Tow for Violation of the California Water Code, Section 13267.*

Bob Tamietti, representing Kenneth Osburn, and Treva Hearne, representing Edgar Stratton, asked that the Board waive the sixty day hearing requirement and defer the hearing on this item until the May 2001 Board meeting while they prepare the workplan and present it to Board staff.

The Board continued this item to its May 2001 meeting

OTHER BUSINESS

11. *Executive Officer's Report*

Mr. Singer highlighted several items from the narrative of his report

Status of IMC Chemical Company Violations

Mr. Singer reported that there has been only one effluent violation this calendar year and the bird mortality has decreased significantly. Progress is being made on the Basin Plan issues working with the Dept. of Fish and Game addressing potential ongoing take of wildlife

While IMC Chemical has made substantial progress, it will be unable to comply with deadlines in waste discharge requirements, a Clean Up and Abatement Order and a Cease and Desist

Order. Staff will be proposing modification of these deadlines at the April Regional Board meeting.

Proposition 13 Projects and Funding

Staff has informally ranked the proposals and forwarded the ranking to the State Board. This process does not require Board approval. The State Board will formally rank the proposals and authorize funding. There is another request-for-proposal coming out soon for the next round of Proposition 13 fundings

Placer County, Rubicon-McKinney Road (Item #6 in the January agenda)

In response to a mid 1990's Cease and Desist Order, Placer County completed a number of Best Management Practices (BMPs) However, in the last year, staff has investigated water quality complaints and issued a Notice of Violation in late 2000. Seasonal closure is a controversial BMP to minimize adverse impacts and reduce maintenance costs. The County will ultimately have to decide its course of action. There are many off-road vehicle users who are concerned about limited or no access during certain times of the year. Mr. Singer is attending a public meeting later this month in Auburn, when the county will be presenting some of the options under consideration.

Caltrans (Item#3 February agenda)

The State Board has issued a statewide Caltrans NPDES stormwater permit that requires submittal of a Stormwater Management Plan (SWAMP) and annual workplans. These plans establish the framework for Caltrans to follow to comply with the NPDES permit. The SWAMP has been submitted twice, and in both cases the Regional Board staff and the State Board staff have found them to be unacceptable. Regional Board staff will be asking the State Board to require Caltrans to propose and develop an acceptable plan or to have the State Regional Boards develop their own plan and impose it upon Caltrans. Staff recently sent a constructive letter to the Caltrans Districts which cover this region, advising them regarding the deficiencies in their annual workplans, and what measures could be changed or added to strengthen them.

Sierra Pines Mobile Home Park (Spill Report-February agenda)

Staff's position is that the County should take the lead in this issue. The Regional Board has a MOU with the County under which the County should take responsibility to address these kinds of issues. The County has agreed to do so and staff will be tracking this closely to make sure that there is adequate follow-through on its commitment. Staff does not intend to become directly involved in regulating the facility at this time.

Walker River Spill

Mr. Singer and Alan Miller addressed questions from Dr. Nebeker on the Walker River spill

12. Reports by Chairperson and Board Members

Dr. Cooley reported that she was unable to attend the State Water Board Regional Chairs Meeting on March 8, 2001 in Sacramento in person due to blizzard conditions. She did participate by telephone for five hours, however.

The Water Quality Coordinating Committee meeting in April looks to be a very interesting Program. Dr. Cooley encouraged Board members to attend and also to participate in the special dinner and award ceremony the evening before the meeting honoring environmentally concerned dischargers with excellent past records within Region 4.

13. CLOSED SESSION

The Board members met in closed session on March 15, 2001 from 10:50 a.m. to 11:00 a.m. to discuss Item #13 (c), (d), (e), and (h).

The Board reconvened in open session at 11:03 a.m.

There being no further business to come before the Board, the meeting adjourned at 11:03 a.m.

Prepared by: _____ Adopted: May 10, 2001
Susan-Marie Hagen, Executive Assistant